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WHITE-HALL,
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A Vindication
OF THE
PROCEEDINGS
OF
His Majesties
Ecclesiastical Commissioners,
Against the Bishop of London *and the Fellows of* Magdalen-*College.*

LONDON,
Printed by *Tho. Milbourn*, and Published by *Richard Janeway* in *Queens-Head-Alley* in *Pater-Noster-Row.* MDCLXXXVIII.

A Vindication
OF THE
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His Majesties
Ecclesiastical Commissioners, &c.

The Introduction.

THE Proceedings of His MAJESTY's *Ecclesiastical Commissioners*, being Made the Common Talk of the Town, especially since the Fellows of *Magdalen*

Colledge have been ſuſpended, and Expelled for their Diſobedience, and Contempt to His *MAJESTY*, it's become Neceſſary to give the World a Juſt and Naked *State* of this whole Affair, to the end they may ſee, what *Manner of Men* Our *Cenſorious* Clergy, and their *Creatures* are; For, on an Impartial Diſquiſition into the Whole of this Matter, 'twill appear, that His *MAJESTY* has taken ſpecial Care, that His Commiſſioners do not Exerciſe the Regal Power in that ſevere Way, the Church of *ENGLAND* has done againſt Proteſtant Diſſenters.

The KING Remembreth the Promiſe He has made of Protecting the Church of *England*, as by Law Eſtabliſhed, and hitherto has done Nothing that Contradicts it; but has been ſo very Tender in this Point, as

as not to go ſo Far, as Juſtly He might; and whoever will but Conſult the Senſe Our Church of *England* Divines, and Lawyers have had of His *MAJESTY's Eccleſiaſtick Supremacy* will ſoon ſee, that it's not eaſie for the Church of *England* to Speak againſt the Authority of His *MAJESTY's* Commiſſioners, or the *Legality* of their Proceedings, without Condemning Themſelves, for what they have done againſt the *Puritans*. The Caſe, in ſhort, will be brought to this; Either the Church of *England* has moſt Unjuſtly Depriv'd the Old Puritans; Or, the KING has very Righteouſly Suſpended the Biſhop of *London*, and Expell'd the Fellows of *Magdalen* Colledge.

The Agreement between what the KING has done, and the Church

of *England-Law*, is ſo Exact and Full, that it's impoſſible for Our *Church-Men* to Vindicate the Practices of their Biſhop, and *Magdalen* Gentlemen, without Tearing up the very *Foundations* of Their Own Eccleſiaſtick Conſtitution. And notwithſtanding the Clamour theſe Men make, the Court Held by the KING's Commiſſioners, and Viſitors, will appear to be Grounded on the Church of *England*-Law, and ſo are the Proceedings in the Inſtances before Us.

SECT. I.

Section I.

The Legality *of the Court, Held by His* MAJESTIES *Eccleſiaſtical Commiſſioners.*

AS for the *COURT*, Held by the KING's Eccleſiaſtical Commiſſioners, though it's Said to be Contrary to the Expreſs Words of a Law lately Made, yet, on a Conſiderate Examination of the Whole Matter; the Caſe plainly is thus: Before the 1*ſt. Eliz.* it is Agree'd, That all Ordinaries, and Eccleſiaſtical Judges whatſoever, Ought in all Eccleſiaſtical Cauſes to have Proceeded according to the Cenſures of the **Church**, and could not in any Caſe have Puniſhed any Delinquent by *Fines*, or *Impriſonments*, unleſs they had Authority ſo to do by **Act** of **Parliament.** The **Papal** Authority did never **Fine** or **Impriſon** in any Caſe

Caſe, but ever Proceeded *Onely* by Eccleſiaſtical Cenſures. But in Queen *Elizabeths* Reign, the **Eccleſiaſtical Commiſſioners** Proceeded to Fine, and Impriſon; and that by Force, as was then Suggeſted, of the Statute *1ſt. Elizabeth.* This **Act** was therefore Conſulted, and the *Common-Lawyers* Differ'd from the *Civilians*, the Former Holding, that This Law gave no Countenance to the Opinion of thoſe, who ſaid that it Impowered the Eccleſiaſtick Commiſſioners to Fine, and Impriſon. And My L^d. Ch. Juſtice *Coke*, in his *Inſtitutes*, doth with the greateſt Clearneſs Demonſtrate, That the Expreſs Letter and Meaning of *1ſt. Eliz.* is to *Reſtore* to the *Crown the Ancient Juriſdiction Eccleſiaſtical*, and no Commiſſioner by Force of that Antient Eccleſiaſtical Juriſdiction could impoſe Fine, and Impriſonment; that theſe Commiſſioners, having their Force from this *Act of Reſtitution*, cannot Inflict any ſuch Puniſhments. However, the Commiſſioners did Proceed in all Caſes to Fine, and Impriſon, and, exceeding the Bounds of Eccleſiaſtical Cenſure, did Oppreſs, and Ruine ſo many thouſand Families, that the

Part 4. c. 74.

Par-

Parliament in the *Seventeenth* Year of *CHARLES* the *First*, took Notice of it, and Declared in the Preamble of that Statute, 17. *Car.* 1. *c.* 11.

That whereas, by Colour of Some WORDS in the Aforesaid Branch of First Eliz. whereby Commissioners are Authorized to Execute their Commission according to the Tenour, and Effect of the KING's Letters Patents, and by Letters Patents Grounded thereupon, the said Commissioners have to the Great and Insufferable Wrong and Oppression of the KING's Subjects, used to Fine, and Imprison, and to Exercise Other Authority not Belonging to Ecclesiastical Jurisdiction Restored by that Act, and divers other Great Mischiefs, and Inconveniencies have also Ensued to the KING's Subjects by Reason of the said Branch, and Commissions Issuing thereupon, and the Executions thereof; Therefore for the Repressing and Preventing of

of the foresaid Abuses, Mischiefs, and Inconveniences for Time to come, Be it Enacted, &c.

Here it must be Noted, that the Ecclesiastick Commissioners taking the Branch of 1st. *Eliz.* in another Sense than the Common Lawyers did, and that by Colour of some Words in it, the Parliament Repeal'd this Branch, thus Understood, Forbidding all Eccleſiastical Judges to Proceed to *Fine*, or *Imprison* the KING's Subjects, or tender the Oath *Ex Officio.*

This Branch of 1st. *Elizabeth* being thus Repeal'd, and the *High-Commission-Court* put down, and Care taken, that No such Court be for the future Erected: 'Twas Generally Concluded,

That all Ordinary Jurisdiction was Taken from the Archbishops, Bishops, Vicar-Generals, or any other person, or persons whatsoever Exercising Spiritual, or Ecclesiastical Power, Authority, or Jurisdiction by any Grant, Licence, or Commission of the KING's *Majesty.* But on the

the contrary it was Declared and Enacted, 13 *Car.* 2. *c.* 12. **That neither the ſaid Act of** 17 Car. 1. **nor any thing therein Contained** Doth, **or** Shall **take away any Ordinary Power, or Authority from any Perſon, or Perſons Named as Aforeſaid**, That is, no Authority, or Juriſdiction is, or ſhall be taken from the *Arch-Biſhops, Biſhops, VICAR-GENERALS*, or any *Perſon*, or *Perſons* Exerciſing Eccleſiaſtical Authority by *any COMMISSION of the KING's Majeſty*, **But that They, and every of Them Exerciſing Eccleſiaſtical Juriſdiction may Proceed, Determine, Sentence, Execute and Exerciſe all manner of Eccleſiaſtical Juriſdiction, and all Cenſures, and Coercions appertaining, and belonging to the ſame, before the making of the Act,** 17 Car. 1. **in all Cauſes, and Matters belonging to Eccleſiaſtical Juriſdiction, according to the** KING's **Majeſty's Eccleſiaſtical Laws, uſed and practiſed in this Realm, in as ample Manner, and**

Form as they did, and might lawfully have done before the making of the said Act.

Thus much is Expreſs in this Statute, 13 *Car.* 2. *c.* 12. whereby all Power, and Eccleſiaſtical Authority, which belonged to Archbiſhops, Biſhops, *Vicar-Generals*, or any other Perſons, exerciſing Authority by *Commiſſion of the* KING's *Majeſty* before the making of the 17 *Car.* 1. is Recognized to belong unto the abovenamed Perſons notwithſtanding any thing in the ſaid Statute to the contrary; and that therefore whatever is ſaid touching the *High-Commiſſion-Court*, in the following Branch, muſt be underſtood of their *Fining*, and *Impriſoning*. Thus much may be alſo inferred from the laſt Clauſe, 13 *Car.* 2. where it is provided, **That this Act, or any thing therein contained ſhall not Extend, or be conſtrued to Extend to give unto any Archbiſhop, Biſhop, or any other perſon, or perſons aforeſaid, any Power or Authority to exerciſe, execute, inflict, or determine, any Eccleſiaſtical Juriſdiction, Cenſure, or Coercion, which they might not by Law**

Law have done before the Year of our LORD, 1639. Nor to *Abridge*, or *Diminish*, the KING's *Majesties Supremacy in Ecclesiastical Matters* and *Affairs*.

Whence I infer, that there is no other Power taken from the Ecclesiastick Commissioners, than that of *Fining*, *Imprisoning*, or *Tendering the* OATH *Ex Officio*. Thus much was suppres'd by 17 *Car.* 1. and no more. An Ecclesiastical COURT exercising this Power was put down, and the Erecting the like for Time to come strictly forbidden. But the COURT Now set up, is not like unto This, for it pretends not to *Fine*, or *Imprison*, or tender the Oath *Ex Officio*; it keeps within the bounds of *Ecclesiastick* Censures, and is no more like the *High - Commission - Court*, than *Doctors Commons* is; for Vicar-Generals, or other Persons exercising Authority by His Majesties Commission,

*The Court Held by His MAJESTIES Ecclesiastical Commissioners, is more Legal than the Bishops Courts; This is in the KING's Name, Theirs in their Own Names only.

have as much Power left them, as Archbiſhops, or Biſhops have.

So much Touching the *Legality* of the COURT.

The next Thing to be Conſidered, is, Their *Proceſs* againſt Dr. SHARP, and the BISHOP of LONDON.

SECT. II.

Section II.

The Biſhop of LONDON's *CASE fairly Stated, and Examined.*

THE State of the Biſhop's *CASE* I will give You in the Anſwer, his Lordſhip Made to the Commiſſioners, when he was Asked by the *Court*, Why *He had not Obeyed his MAJESTY's Command for Suſpending* Dr. *Sharp*, which is as followeth. *To the Queſtion, that was Propoſed to Me by Your Lordſhips*, viz. **Why did you not obey the** KING's **Command in his Letter concerning the Suſpending Dr.** Sharp.

I Henry *Biſhop of* London *Do Anſwer, That immediately upon the Receipt of His MAJESTIES Letter from my* Lord Preſident, *the Tenour whereof follows*, viz.

James R.

RIGHT *Reverend Father in God, WE Greet You well.* Whereas, *WE have been Inform'd, and are fully ſatisfi'd, that Dr.* John Sharp, *Rector of the Parish-Church of St.* Giles *in the Fields, in the County of* Middleſex, *and your Dioceſs, notwithſtanding Our Late Letter to the moſt Reverend Fathers in* GOD, *the Archbiſhops of* Canterbury, *and* York, *& Our Directions concerning Preach-*

ers

ers, Given at Our Court at White-Hall, *the* Fifth *of* March, 1685. *in the Second Year of Our* Reign; *yet He the ſaid Dr.* Sharp, *in Contempt of the ſaid Orders, hath in ſome of the Sermons he hath ſince Preached*, Preſum'd to make unbecoming Reflections, *and to* Utter ſuch Expreſſions as were not Fit, *or* Proper for Him; endeavouring thereby to beget in the Minds of his Hearers, *an* evil Opinion *of* US, *and Our* Government, by Inſinuating Fears, and Jealouſies to diſpoſe them to *Diſcontent*, *and* to lead them into *Diſobedience, Schiſm*, *and* Rebellion. *Theſe are therefore to* Require, *and Command you immediately upon receipt hereof, forthwith to* Suſpend Him from further Preaching in any Pariſh-Church *or* Chappel *in your Dioceſs*,

Dioceſs, untill he ſhall give Us *Satisfaction, and Our further Pleaſure be Known herein. And for ſo doing, this ſhall be Your Warrant. And ſo WE bid You heartily Farewel.*

Given at Our Court at *Windſor*, the *Fourteenth* Day of *June*, 1686. in the Second Year of Our Reign.

By His MAJESTIES Command,

SUNDERLAND, P.

I *Took the beſt Advice I could get, concerning the* Suſpenſion *of Dr.* Sharp, *and was Inform'd, That the Letter being Directed to Me as Biſhop of* London, *to Suſpend a Perſon under my Juriſdiction, I was therein*

therein to Act as a Judge; it being a Judicial Act, and that no Perſon could by Law, be puniſhed by Suſpenſion, before he was Called, or without being Admitted to make his Defence; I thought it therefore my Duty, forthwith Humbly to Repreſent ſo much to my Lord Preſident, that ſo I might Receive His MAJESTIES Farther **Pleaſure** in that Matter. Nevertheleſs, that I might Obey His MAJESTY's Commands, as far as by Law I could, I did then ſend for Dr. Sharp, and Acquainted Him with His MAJESTY's **Diſpleaſure**, and the Occaſion of it, by ſhewing him His MAJESTY's Letter; But he having never been Called to Anſwer any ſuch Matter, or make his Defence, and he Proteſting his Innocence, and likewiſe Declaring himſelf moſt Ready to give His MAJESTY full Satisfaction therein, in Order thereto, I Adviſed him to forbear Preaching, untill he had Applyed himſelf to His MAJESTY; and at his Requeſt, I made him the Bearer of a Letter to my Lord Preſident, Waiting for His MAJESTY's further Orders to Proceed againſt him Judicially, in caſe he ſhould not at that Time give His MAJESTY the Satiſ-

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faction Required, and the ſaid Doctor hath not ſince Preached within my Dioceſs.

H. *London.*

That we may Rightly Underſtand the whole of this Caſe, it muſt be obſerv'd, That His *MAJESTY* received ſuch Evidence againſt Dr. *Sharp*, as did fully ſatisfy Him of the Truth of the Charge; That the Charge it ſelf is of a very high Nature, containing in it, not only Contempt of His *MAJESTY's* Letter, ſent the two Archbiſhops, and Orders, preſcribing Directions concerning Preachers; But, *That by his Preaching, he endeavoured to beget in the Minds of his Hearers*, an *evil Opinion of His MAJESTY*, and *Government*, by inſinuating Fears, and Jealouſies to diſpoſe them to *Diſcontent*, and lead them into *Diſobedience*, *Schiſm*, and *Rebellion*: A Crime, which moſt undoubtedly deſerves an *Ipſo Facto Suſpenſion*, and according to the Opinion of all the Judges, in the *Second* Year of *JAMES* the *Firſt*, is

is an *Offence Fineable* at *Diſcretion*, and *very near to Treaſon*, and *Felony in the Puniſhment.* Thus it was Reſolv'd in the **Puritans** Caſe, who intimated in a Petition to the KING, That if He deny'd their Sute, many Thouſands of His Subjects would be *Diſcontented*; and the Reaſon why they thus Reſolved was, * *Becauſe ſuch Petitions tended to the Raiſing of Sedition, Rebellion, and Diſcontent amongſt the People.* Whereby theſe Juſtices ſufficiently Declare, That what tends to the Raiſing Sedition, Rebellion, and Diſcontent, is an Offence Fineable at Diſcretion, and very near to Treaſon, and Felony in the Puniſhment: And if His *MAJESTY* would have proceeding againſt Doctor *Sharp* according to the Method theſe Church of *England* Judges have directed unto againſt *Puritans*, the Doctors Offence muſt have been made a Matter Criminal worthy of open Shame; and in which Caſe *His MAJESTY*, to expreſs a tender Reſpect unto the Clergy, muſt have found it neceſſary to * Degrade the Doctor, whereupon, a *Deprivation* from his Eccleſiaſtical Benefice would have followed.

* Crookes Reports *an.* 2 Jac. 1.

* See Dr. *Ridley's* View, *p.* 2. *c.* 2. *ſect.* 3.

But his *MAJETY*, to ſhew the Extraordinarineſs of His Compaſſion to his Divines of the Church of *England*, takes a milder Courſe, Commanding the Biſhop of *London*, only to *Suſpend* him: And yet the Biſhop and his Learned Counſel think it, not only *Hard*, but *Illegal*. For ſaith the Biſhop, *I was informed, That the Letter being Directed unto me, as Biſhop of* London, *I was therein to Act as* a Judge, *it being a Judicial Act, and that no Perſon could by Law be Puniſhed by* Suſpenſion *before he was Call'd, or without being Admitted to make his Defence.*

Here then lies the Streſs of His Lordſhips Plea, which will be found to lean on a very manifeſt Miſtake. For the Biſhop, obſerving in the KING's Letter a Command to Suſpend the Doctor for a Crime ſo very great, as this mention'd in the ſaid Letter (Of the Truth of which, the KING aſſures him He is fully ſatisfied) ought to have taken it for granted, that Doctor *Sharp* had incurred an *Ipſo Facto* Suſpenſion, and that 'twas his *MAJETY*'s Pleaſure, that he ſhould Denounce him

him Suſpended; which the Biſhop, not as a *Judge*, but as a *Party* engag'd in Defence of the Canon, was bound to do.

The Doctor's Offence then (thus preſumed) is very great, and His *MAJESTY* confines Himſelf within the Circle of Clemency, in that He deals with him in an Eccleſiaſtical Way, and proceeded no further than to conſider him to be *Ipſo Facto* Suſpended; and if *Ipſo Facto* Suſpenſions be, according to Our Church of *England*-Laws Valid, the Biſhop's inſiſting on the neceſſity of his Acting as a *Judge* in a judicial way cannot help him. It hath been my part therefore to examine, *Whether* Ipſo Facto *Suſpenſions be agreeable to the Eccleſiaſtick Canons*, now *in force*; and *what manner of Proceſs muſt be Obſerv'd where they are Incurr'd*: And on Enquiry, I find, that as the *Canoniſts* generally, ſo *Lindwood* in particular diſtinguiſhes thoſe Cenſures that are *à Jure* from what are *ab Homine*, and the Sentence *à Jure lata* from what is *ab Homine ferenda*, concluding, that a Judicial Proceſs is not neceſſary, when the Delinquent is faln under the Sentence

Sentence *à Jure*; and that therefore he Ordinary, Chancellor, or Arch-deacon, whoſe work it is to declare ſuch as are *ipſo facto* Excommunicated, or Suſpended to be ſo, do not then act as *Judges*, but as *Parties* engag'd in the Defence of Eccleſiaſtick Laws.

Amongſt the Conſtitutions of *Stephen* Archbiſhop of *Canterbury*, it's ordain'd, That * no Arch-deacons, nor their Officials preſume to publiſh the Sentences of Excommunication or Suſpenſion, or Interdict, on any without previous Admonition: But where the Crime is *Manifeſt*, they may pronounce theſe Sentences: And it muſt be obſerved, That by † **Manifeſt**, We are to underſtand what is clear, antecedently to a *Judicial* Proceſs.

* *Decernimus ne Archidiaconi vel Officiales eorum Sententias Excommunicationis, Suſpenſionis, vel interdicti in aliquem audeant promulgare, ubi exceſſus non eſt* Manifeſtus, *niſi monitione Canonica præcedente.* Lindwood conſtit. Provin. de Sentent. Excom. c. *ut* Archidiac.

† *Hic ſcias quod Manifeſtum eſt publica ſeu famoſa inſinuatio vel proclamatio & communis ex certa ſcientia, & a certis Auctoribus proveniens*, nondum judicialiter diſcuſſa. *Lindwood* ubi ſupr. in verb. Manifeſtum.

Beſides,

Beſides, *Lindwood* expreſly affirms, That where the * Superiour declares the Sentence in *Force* of the *Canon*, there is no need of a previous Admonition.

* *Ubi Superior fert ſententiam Excommunicationis in vim Statuti, non eſt aliqua monitio neceſſaria.* Ubi ſupr.

Again, where the Excommunication † is pronounced in *Force* of the *Statute*, and he that doth Excommunicate, acts as a *Party*, who with the Spiritual Sword defends the Laws of the Church, which is Lawful enough for him to do, Admonition is not neceſſary. But, when the Superiour acts as a *Judge*, then indeed he is oblig'd to obſerve a Legal Proceſs.

† *Ubi Excommunicatio fertur in vim ſententiæ & Excommunicans procedit ut pars, quæ jura ſua defendit muerone Spirituali, quod ſatis licet, non eſt neceſſarea monitio.* Ubi ſupr.

But the thing I would inculcate, is this, That by the Canon Law, a *Penalty* may be inflicted without a Hearing *Parties*; and that, Becauſe it is Decreed *à Jure*, and the Delinquent incurs it *Ipſo Facto*. This is the meaning of the many *Ipſo Facto* Excommunications and Suſpenſions, that are Decreed by

by thoſe very *Canons* embrac'd by the *Church* of *England*; at which time the Biſhop is not to act as a *Judge*, but as a Part, *Quæ Jura ſua defendit Mucrone Spirituali.*

* *Duct. Dubit.* lib 3. c. 2. r. 2. n. 14.

Whether, what * Dr. *Taylor* Affirms, when he aſſures us, That he who incurs a Penalty *Ipſo Facto*, is bound to be his own Executioner (Seeing whatever their Obligation may be, none are ſo forward, as to Execute it on themſelves) be true, or no; yet according to Church of *England*-Principles, we may aver, That when any do incur Excommunication, or Suſpenſion *Ipſo Facto*, the Ordinary, Archdeacon, or his Officials may, without *Hearing Parties*, pronounce it, and take care to ſee, that it be done; and if the Ordinary Command, the Archdeacon, who is Sworn to render Canonical Obedience, muſt do it. That when the Sentence is *à Jure lata* in ſome Caſes it's requiſite, that either the Ordinary, or ſome other do alſo *Pronounce* it I grant; for in the Conſtitution made by *Boniface*, Archbiſhop of *Canterbury*, thoſe who were *Ipſo Facto* Excommunicated, muſt

muſt by the * Ordinaries of the place be declared to be ſo; but then 'tis † without any *previous Admonition*, it's only needful that the Delinquent be cited to Appear, and ſhew Cauſe why he ſhould not be declared Excommunicate; and no more can be ſaid of *ipſo facto* Suſpenſions, where the Sentence is *à Jure ſeu Canone*; and the utmoſt that is neceſſary, is only, That theſe * Suſpenſions be *publickly* Denounced: For, as *Lindwood*, if an Ordinary be Suſpended *à Canone*, he cannot Excommunicate, if it be Denounced; but otherwiſe he may.

* *Per locorum Ordinarios publice Excommunicati nuncientur.* Lindwood provin. conſtit. de foro compell. c. contingit. aliquando.

† *Non opus eſt monitione in hoc caſu ſed ſola citatione ut veniant allegaturi cauſam rationabilem, quare declarari non debeant incidiſſe in dictam ſententiam.* Ubi ſupr. in verb. Nuntiatur.

* *Nec etiam Excommunicare poteſt & hoc verum in eo, qui eſt ſuſpenſus* ab Homine, *vel etiam* a Canone, *ſi ſit publice denunciatus, alioquin in ſuſpenſo* a Canone *non denuntiato, quamdiu toleratur in ſuo ſtatu valet quod per eum agitur.* Lindw. prov. l. 1. tit. 2. de conſtit. c. Quia in.

This may ſuffice to prove, That to Command a Biſhop to Suſpend; that is, To pronounce one Suſpended without a Judicial Proceſs, is conform to the Conſtitutions em-

brac'd by the Church of *England*; and in this Caſe the Biſhop is bound to Obey, if Commanded by the Supreme Ordinary. And although ſome very boldly Affirm, That theſe Suſpenſions are contrary to the Laws of GOD, of Nature, and of Nations: yet nothing hath been more commonly practis'd by the Church of *England* in their proſecuting Diſſenters than *Ipſo Facto* Excommunications, which are of a like kind with *Ipſo Facto* Suſpenſions, for both are without a *Judicial* Proceſs; and at this very time *Ipſo Facto Deprivations*, which are more than *Suſpenſions ab Officio*, are eſtabliſhed by our Laws.

By the Statute of 21 *Hen.* 8. If an Incumbent, having a Benefice with Cure of Souls, value *Eight Pound per Annum*, take another with Cure, immediately after Induction thereunto, the former is void, even without any *Declaratory Sentence* of Deprivation in the Eccleſiaſtical Court. And whoever neglects to Read *The Articles of Religion* within two Months next after *Induction*, he is deprived *Ipſo Facto*; and upon ſuch Avoidance, there is no need of a *Sentence Declaratory*. And if this be not contrary to the Laws of GOD,

GOD, nor of our Land, How comes it to paſs, that an *Ipſo Facto* Suſpenſion ſhould be ſuch a hideous thing in the eſteem of a Church of *England*-Man, who has been ſo accuſtomed to treat the *Diſſenters* after this very way and manner?

On the whole then, I hope it's ſufficiently clear'd, That the Biſhop of *London*, in the preſent caſe, was bound to Obey His MAJESTY, and Suſpend the Doctor; That the Capitulation he enter'd into with his Prince, and the Contempt of His *Authority*, deſerv'd no leſs than a Suſpenſion *ab Officio*.

Section III.

A Juſt Account of the Proceedings of the Commiſſioners *Appointed by His* MAJESTY *under the Great Seal for Viſiting St.* Mary Magdalen *College in* Oxford.

ON the Death of Dr. *Clark*, Preſident of St. *Mary Magdalen* in *Oxford*; before the day of Election the KING ſends down a *Mandamus* for the Electing another; and whereas, the Fellows were Sworn to obſerve the College Statutes, which oblig'd them to Chooſe one of their Own, or of New College, His *MAJESTY* ſends down a *Diſpenſation* with His *Mandatory Letter*; notwithſtanding which, the Fellows pretending, that they were

were bound in Conſcience to obſerve the Statute, becauſe of their Oaths, regard not the Mandatory Letter, nor Royal Diſpenſation; They make not a Choice as the KING Commanded, and when cited before His *MAJESTY*'s Commiſſioners, and Viſitours, to Anſwer for their Diſobedience, they in a moſt Contemptuous Manner proteſt againſt the Proceedings.

The Great Points therefore to be Diſcuſſed, may be Reduced to theſe two Heads.

I. *Whether the KING by His Prerogative may not Diſpenſe with the College* Statutes?

II. *Whether, when there is a* Diſpenſation *Granted, the Fellows are by their Oath Obliged*

to

to Act according to thoſe very Statutes, that are Diſpenſed with?

A **Solution** to Theſe **Queſtions** will be **Sufficient** to Clear the Truth in this Affair; for if the Diſpenſation according to the Church of *England*-*Law* be valid, and the Fellows are not by their Oaths Bound to obſerve the Statutes after ſuch a Diſpenſation, 'twill unavoidably follow, That the *Magdalen*-Fellows have been moſt juſtly Suſpended and Expell'd. And thus much will be with much clearneſs evinced.

I. *Touching the* Diſpenſing Power.

The KING's Power in Matters Eccleſiaſtical is ſo very ample, and extenſive, that it's not eaſy for any one to ſet bounds, or limits to it; By our Common Lawyers it hath been often affirmed, *That whatever the Pope* de facto *formerly did within this Realm by*

by the Canon Law, that of Right *belongs to our* KING S.

And on this Ground it has been adjudged, That the *Legiſlative Power* in Matters Eccleſiaſtical is lodged in the KING. The *Pope* made Laws for the Government of the Clergy; and ſo may the KING: And thus much Q. *Elizabeth*, as ſupreme Head of the Church of *England*, on the Requeſt of Archbiſhop *Whitgift* exerciſed, when ſhe impoſed a Subſcription to the three Articles, and depriv'd thoſe who would not Obey. The Statute of 13 *Eliz. c.* 12. required Subſcription to the *Articles of Faith*, and the *Doctrines of the Sacraments* **onely**; and with this, thoſe, who preached againſt Ceremonies, and the Hierarchick Government, complied.

Whitgift therefore, and the Eccleſiaſtical Commiſſioners go further, and by the Regal Power ordained Subſcription to the *Ceremonies* and *Government* of the Church, and depriv'd ſuch as refuſed to Subſcribe. In the Firſt of K. *James* I. theſe Articles are Eſtabliſhed by the *Canons*, with-

without an Act of Parliament, made in that Year, on which occaſion Deprivations were very Common, and the Puritanick * Clamours as great, yea, ſo great, that the Clergy judg'd it neceſſary to beſeech His *MAJESTY* to command all the Juſtices of *England* to confer together of this thing, and give in their opinion, which accordingly they did; For it being demanded by the Lord Chancellour, * *Whether the Deprivation of the Puritan Miniſters for refuſing to conform themſelves to the Ceremonies appointed by the laſt Canons*, was Lawful? They all anſwered, *That they had conferred thereof before, and held it to be Lawful, becauſe the KING has the* Supreme Eccleſiaſtical Power.—— *And they held it clear, that the KING, without a Parliament, might make Orders and Conſtitutions for the Government of the Clergy, and might deprive them, if they Obey not.*

* We complain, That we are put out from our Benefices, which are a *Freehold* by the bare and ſole Sentence of a Biſhop; whereas the Liberty of an *Engliſh-man* is this, To be put from his Freehold by none but by the Verdict of Twelve Men. *Parker* on the Croſs, *Part* 2. *Ch.* 8. *Sect.* 3. *P.* 108.

*See *Crokes* Reports, *an.* 2. *Jacob* 1.

The

The *Civilians* go higher, affirming, That the KING, as Supreme, is *Himſelf* inſtead *of the Whole Law*; yea, that he is the *Law it Self*; and the Only Chief Interpreter thereof, as in whoſe Breaſt reſides the whole Knowledge of the ſame. And that His *MAJESTY*, by communicating His Authority to His Judges, to Expound the Laws, doth not thereby abdicate the ſame from Himſelf. Theſe, with *Borellus*, do hold, * That *Principum placita legis habent vigorem.*

*Dr. *Ridley* view, p. 2. c. 1. ſect. 7.

And as the KING, by the Fulneſs of His Eccleſiaſtical Power can, *without a Parliament*, make what Laws He Pleaſe for the Government of the Clergy; in like manner, The *Power of the KING*, in Matters Eccleſiaſtical, is too ample to be *limited by an Act of Parliament.*

Thus much has been clear'd up by my * part. 4. Lord * *Coke*, in his *Institutes*, where he tells us, **That albeit the Acts of** 24 Hen. 8. & 25 Hen. 8. **do, upon certain Appeals, make the ſentence Definitive, as to any Appeal; for the Words be** [ſhall be Definitive] **and that no further Appeal ſhould be had, yet the** KING, **after ſuch a** Definitive Sentence, **as** Supreme Head, **may grant a Commiſſion of Review,** ad Revidendum, &c. —— **for that after a** Definitive Sentence, **the Pope, as Supreme Head, by the Canon Law, uſed to grant a Commiſſion** ad Revidendum.— **And ſuch Authority as the Pope had, claiming as Supreme Head doth of Right belong to the Crown, and is annexed thereunto by the Statutes of the** 26 Hen. 8. c. 1.

and

& 1 Eliz. c. 1. And so it was Resolv'd in the Kings-Bench, Trin. 39 Eliz. where the Case was, That Sentence being given in an Ecclesiastical Cause in the Countrey, the Party grieved appeal'd according to the said Act of 25 Hen. 8. to the Archbishop, before whom the first Sentence was affirmed: whereupon, according to the Statute of 25 Hen. 8. he appeal'd to the Delegates. And upon this matter a Prohibition was prayed in the King's-Bench, pretending that the Commission of Review was against Law, for that the Sentence before the Delegates was Definitive by the Statute of 25 Hen. 8. But upon Mature Deliberation and Debate, the Prohibition was denyed; for that the Commission for the Causes

abovesaid was resolv'd to be lawfully granted. In this Case, I being then (saith Sir Edward Coke) the Queens Attorney, was of Counsel to maintain the Queens Power. And Presidents were cited in this Court in Michelot's Case, Anno 29 Eliz. and in Goodman's Case, and in Hewet's in 29 Eliz. also. So far Sir *Edw. Coke.*

From whence it's most manifest, That an Act of Parliament can be no Bar to the Exercise of the Regal Power, that is established by the Common Law, as the KING's Supremacy in Matters Ecclesiastical is. But further,

The *Grant of Dispensations is a Peculiar and very Considerable Part of Ecclesiastical Jurisdiction*, which is eminently Seated in the CROWN. That the same Power the

Pope

Pope claimed in this Land, as Supreme Head, doth of Right belong to our *KINGS*, has been abundantly proved; and in the Statute of 25 *Hen.* 8. *c.* 22. it is affirmed, *That the Pope claimed full Power to Diſpenſe with all Humane Laws of all Realms in all Cauſes, which he called Spiritual.* And my Lord Chief Juſtice *Hobart*, delivering his Opinion about the Power of *Diſpenſing* in general, holds it clear, * **That though the Statute of** 25 Hen. 8. *c.* 21. **ſays, That all Diſpenſations,** &c. **ſhall be Granted in manner and form following, and** not otherwiſe; **that yet the** KING **is not thereby reſtrained, but his Power remains full and perfect as before, and he may ſtill Grant them as** KING; **for all Acts of Juſtice and Grace flow from him, as** 4 *Eliz.* Dier. 211. **The Com-**

* *Colt* and *Glover*, *ver*, Biſhop of *Leitchfield.*

miſſion

million of Tryal of Piracy upon the Statute of 28 Hen. 8 *c.* 13. is good, tho the Chancellor do not nominate the Commissioners, as that Statute appoints, and yet it is a New Law. And Mich. 5. & 6. Eliz. Dier. 225. The Queen made Sheriffs without the Judges, notwithstanding the Ninth of Edward 2. And Mich. 13. & 14. Eliz. Dier. 303. The Office of Alnager granted by the Queen, without the Bill of the Treasurer, it is good with a non obstante, against the Statute of 31 Hen. 6. *c.* 5. For these Statutes, and the like, were made to put things in Ordinary Form, and to ease the SOVEREIGN of Labour, but not to Deprive *Him* of Power.

Besides

Beſides, the Learned of the Law do with much Plainneſs aver, and clear up thus much to Us, That the *KING* can Grant out what ever Diſpenſations the Pope did, ſo long as the things Diſpenſed with are not *Mala in ſe.* In *Eccleſiaſticals* the *KING* can Diſpenſe not only with *Canons*, but with *Acts of Parliament*, yea, with any thing that is but *Malum prohibitum*; and ſeeing the Univerſities are for the Maintenance of Religion, and fall under the Care of the Supreme *HEAD*, as other Spiritual and Eccleſiaſtical Corporations do, the *KING* can in like manner Diſpenſe with their Statutes. If with the Greater, no doubt with the Leſſer. If an Act of Parliament may be Diſpenſed with, it's not to be queſtion'd, but a Provincial Canon may be ſo too; and if Acts of Parliament and Provincial Canons cannot limit, or confine,

or

or ſtand before the *Diſpenſing Power*, How is it poſſible, that a *Colledge-Statute* ſhould do it? To ſuppoſe that it can, is to aſcribe greater Power to One Man, or to a little Corporation, than to the greateſt Body of the *Nation*; than which, nothing can be more abſurd. Beſides, the Laws enacted by the Founder of a Colledge, can have no more Strength than they receive from the *KING*. Nor can a Colledge be erected without *His* Leave.

Time would fail to produce all the *Authorities*, by which (according to Church of *England*-Doctrine) the *Truth* hereof may be Confirm'd. And this is ſo well done by other Hands, that I will ſtay no longer on it, but will go on to Conſider,

Whether, notwithſtanding a Diſpenſation, thoſe who have been Sworn to Obſerve the Statutes

tutes of a Colledge, cannot Act contrary thereunto, without violating their Oath? For here lies the ſtreſs of what the *Magdalen* Gentlemen have to ſay for themſelves; and yet We can no ſooner Explicate the Nature of a *Diſpenſation*, but may ſee how feeble the Foundation is, on which theſe Men lean in Defence of their contemptuous Diſobedience to the Royal Mandate.

The Nature then of a *Diſpenſation* (as it was agreed in the caſe of * *Evan* and *Kiffin* againſt *Askwith*) is *to derogate*, and *make void a Statute, Canon*, and *Conſtitutions* as to *that, which it prohibits the Parties, to whom 'tis Given. It is an Exception* (as to them) *out of the Statute*, or *Conſtitution.* The Obligatory Power of the Statute or Canon, is taken away, as to that Perſon, who has the Diſpenſation. † It is as to him in a

* *Jones* Reports, *fol.* 158, &c.

† *Diſpenſatio eſt mali prohibiti provida relaxatio.*

manner vacated. Though the Canon, Statute, or Conſtitution be not made ſimply void and null; yet in ſome Reſpects it is made void. As to this, or the other Perſon, for this time the Obligation Ceaſes. Here then lies the Difference between the *Diſpenſing* with a Law, and the *Repealing* it. A Repeal vacates the Law to all Intents and Purpoſes, but a Diſpenſation doth onely in ſome reſpect vacate it. By a *Repeal* the Law is aboliſhed, but where there is a *Diſpenſation* onely, though the Law obliges not the Perſon for ſuch a time, yet it remains a Law ſtill. A Repeal kills it, but a Diſpenſation only binds it up, or ſtands between the Obligation of it, and this or the other Party; but ſtill as to the Party to whom the Diſpenſation is given, the Law is made void, and to him it is as if there had been no ſuch Law for that time.

So

So much touching the Nature of a *Diſpenſation*; from whence it clearly follows, That the *Magdalen* Gentlemen ſtood not bound by Oath to Chooſe according to their Statutes, for to them there remained no ſuch Statute as obliged them to chooſe one of their own Society; and they might, notwithſtanding their Oath, act as if no ſuch thing had been. For the KING ſent 'em his Diſpenſation, which took away the ſtrength of their Statute; it laid the very Statute aſide for that ſeaſon: And this Bar being taken out of the *Fellows* way, His Majeſty commands them to chooſe another, and all were bound to Obey the Royal Mandate: For, they were ſworn only to the Statutes, that were in force; but the Diſpenſation taking away the force of the Statute, the Oath oblig'd them not to keep it.

To illuſtrate this, I will ſuppoſe, that by an Act of Parliament this College-Statute had been made utterly void and null; as thoſe relating to the Maſs have been: Will any ſay, that the Fellows, becauſe of their Oath are with a *Non Obſtante* to this Act of Parliament, ſtill bound to keep to the vacated Statute? I preſume not, for Statutes made by a particular Man, or Corporation, cannot be of greater Force than an Act of Parliament; and the College-Statute being vacated, the Oath obliges them not to keep it; and for the ſame reaſon, I may boldly affirm, that ſeeing, according to Church of **England-Law**, the Royal Diſpenſation doth as effectually make void the Statute to theſe Men for that time, they are not obliged by their Oath to obſerve it.

Furthermore, we find, that in proceſs of time, ſome Laws never Repeal'd wear out of date, and become uſeleſs; and though never Repeal'd, yet muſt be conſider'd as void and null, or the whole Kingdom muſt be brought under the Guilt of Perjury. I will inſtance in one Law, which was Made *Anno* 3 *Hen.* 8. *c.* 3. Requiring **Every Man, being the** KING's **Subject, not Lame, Decrepit, nor Maimed, nor having any other Lawful, or Reaſonable Cauſe, or Impediment, being within the Age of Forty Years, except Spiritual Men, Juſtices of the One Bench, and of the Other, Juſtices of Aſſize, and Barons of the Exchequer, to uſe, and exerciſe Shooting in Long-Bows, and alſo to have a Bow and Arrow ready continually in his**

Houſe

House to use, and do use himself in Shooting: Also, that the Father, Governours, and Rulers of such as are of tender Age, do teach and bring up them in the Knowledge of the same Shooting, &c. I say, there is a Law requiring thus much, not yet Repeal'd, that I can find; and all Constables still Swear, *That they will have a Care for the Maintenance of* **Archery**, *according to the Statute.* But yet it's Notorious, that this Statute is not Observed, nor doth the Constable regard this part of his Oath. And why, But because the Statute is Obsolete, and by a general Consent grown out of use, and must be esteemed as if it had been vacate and null. And it's most manifest, that a Dispensation can as effectually, at least so far vacate a Statute, that the Person, who is otherwise Sworn to keep it, may without Perjury forbear it's Observance.

And

And that this is manifeſt, where there is a Diſpenſation, appears from the Practices of our Judges, and Juſtices of the Peace, throughout the Whole Kingdom, who, tho' Sworn to Execute the Laws, do eſteem themſelves Diſcharged from the Execution of thoſe lately Diſpenſed with by His Sacred MAJESTY. But,

See that new little Book Entituled, *The Juſtices Caſe*; which, if it had come out time enough, might perhaps have kept ſome of theſe *Magdalen*-Scholars in their Places, ſuppoſing any of them purely Conſcientious, that went out meerly for want of Light, about the Obligation of an Oath, which is the buſineſs of that Caſe.

To come Cloſer to our *Magdalen*-Gentlemen, I would propoſe to their Conſideration the Church-Wardens Oath, which runs in theſe Words, [**You ſhall ſwear Truly and Faithfully to Execute the Office of a** Church-Warden, **within your Pariſh, and according to the beſt**

best of your Skill, and Knowledge, Present such Things, and Persons, as to your Knowledge are Presentable by the Laws Ecclesiastical of this Realm.] This is the Oath, and whatever is contrary to any one Canon, is Presentable by the Laws Ecclesiastical. And if a *Dispensation* be not sufficient to excuse the Church-Wardens from Perjury, for not Presenting the Transgressours of the Canons, This sort of People will not be only Perjur'd, for not Presenting the *Dissenters* at this time, but for not Presenting some of the Fattest amongst their own Clergy-men. For as the *Civilians* assure Us, the Ecclesiastick Law is, *That every Spiritual Person is Visitable by the Ordinary*, and yet the KING exempts Multitudes from the Ordinary's Visitations. Thus formerly many *Abbies* have been, and now all *Donatives* are exempt,

empt, and the Eccleſiaſtical Law is Diſpenſed with; and, Muſt all thoſe who are in Donatives, and receive not Inſtitution nor Induction from the Biſhop, nor will ſubmit to the Ordinary's Viſitation, be preſented; or are the Church-Wardens Perjur'd?

Again, All *Pluralities* are contrary to the Canon; but if *His MAJESTY* gives a Diſpenſation, a Prieſt may hold two Benefices; and nothing more Common. There is alſo a *Canon*, That *a Baſtard ſhall not be a Prieſt*; however, if the KING Diſpenſes with this *Canon*, the Baſtard may enter into Holy Orders. But muſt the Church-Warden preſent Every *Baſtard-Prieſt*, and all that hold *Pluralities*, or elſe be Forſworn?

But the Caſe is too plain to need further *Proof*. All know, That when an Oath is taken to Obſerve the Laws, it is no longer than they are in Force; If the Law be repeal'd, the Oath obliges not any to Obſerve it; and as to the Perſon Diſpenſed with, the Law for that time ſo far ceaſes, that to him, there is no

ſuch Law, and therefore his Oath binds him not in this caſe to Regard it. *Effectus enim Diſpenſationis* eſt *auferre à particulari Perſona ſimpliciter*, vel *in tali tempore aut occaſione, Obligationem ad Opus*, vel *Omiſſionem*, vel *pœnam*, vel *auferre irritationem*, aut *inhabilitatem, quam lex ipſa efficiebat.* So *Salas.*

Thus you ſee, That if it be in the Power of the KING to ſuſpend the Colledge-Statutes, the Pretence of Conſcience about keeping to their Oath, is vain and ludicrous: For which Reaſon, I will only add one Conſideration more, to ſhew that the *Diſpenſing* Power leans on a Foundation that cannot be moved, but to the Endangering the Whole Eccleſiaſtick Juriſdiction, as Exercis'd by the Biſhops.

'Tis well known, That what Power is Strong enough to Diſpenſe with an Act of Parliament about *Civils*, wants not Strength to Diſpenſe with Parliamentary Laws, touching Eccleſiaſtical Affairs; nor with Church-Canons, nor Colledge-Statutes. And that the KING can Diſpenſe with Acts of Parliament,

liament, relating unto Civil Affairs, is a Matter grounded on the ſame Bottom with the Biſhop's Juriſdiction; and that is, On the *Opinion of the Church-of-England-Judges.*

That it is the Opinion of our *Judges*, That the *KING* can Diſpenſe in Matters *Civil*, is Notorious, the Matter of Fact is very Lately become too Obvious to admit of a Denyal; and that the Biſhop's Juriſdiction has no other ground for its Support, is eaſily proved. For by the Firſt of *Edw. 6.* it is declared, that *It's contrary to Common-Law for any to Hold Courts in any other than the KING's Name.* So that, whatever becomes of this Statute, whether Repeal'd, or in Force, ſeeing the Common-Law remains the ſame, the Biſhops muſt have a Commiſſion from the *KING*, and Hold *Courts* in His *MAJESTY'S* Name, or be affirm'd to make an Invaſion on the *Common-Law*, which is no leſs than a *Premunire.* However, the Biſhops have held Courts in their own Names ever ſince King *Edward's* Days; and, as the Old *Puritans* did imagin, their Courts were Illegal, their Biſhops

Premunir'd, and ſeveral Demurr'd to their Juriſdiction. For which Reaſon, **Charles** the Firſt call'd all his Judges together, commanding them to give in their Opinion touching this Matter, which they did in theſe Words:

According to your Lordſhips Order, made in His *MAJESTIES* **Court of** Star-Chamber **the** 12th. **of** May **laſt, we have taken Conſideration of the Particulars, wherein our** Opinions **are required by the ſaid Order; and we have All agreed, That** Proceſſes may Iſſue out of Eccleſiaſtical Courts, **in the Names of Biſhops; and that a Patent under the Great Seal is not neceſſary,** &c.

By this it appeareth, That the Whole Power of the Biſhop's Juriſdiction depends upon the Opinion of theſe Judges; and if theſe Judges Opinion be not more prevalent than the Common-Law, the Juriſdiction of Biſhops is gone. If it be, the *Diſpenſing-Power*, grounded on the Late Opinion of

of the Judges, is Valid: So that the laſt Reſult will be this, the Biſhop's Power muſt be Deſtroyed, or the *KING's Diſpenſing-Power* muſt be Recogniz'd.

But although the Matter is ſo fully cleared up, in Defence of His *MAJESTY's* Commiſſioners and Viſitors, yet the Inſolence of the *Magdalen*-Fellows, and their Contempt of the *Regal Authority*, exceeded all Bounds; For as they, contrary to the Royal Mandate, proceed to Elect Dr. *John Hough*, and although his Election was made null and void by the Commiſſioners for Eccleſiaſtical Cauſes, yet the Dr. refuſed to ſubmit thereunto, whereby he put the Commiſſioners under a neceſſity of Expelling him the Houſe; which being done, the Doctor makes his Proteſtation againſt their Proceedings, as *Illegal*, and *Unjuſt*, and *Null*; and this Proteſtation accompanied with a Tumultuous Humm or Acclamation, as if the Whole Houſe had been engaged in a Conſpiracy againſt His *MAJESTY*, and had deſign'd the Depriving the CROWN of One of its Richeſt Jewels, *viz.* The Eccleſiaſtical Supre-

Supremacy. The Fellows alſo at firſt refuſed to ſubmit unto the Biſhop of *Oxford*, who was by His *MAJESTY* made their Preſident; but at laſt gave in this Anſwer, in Writing, *viz.*

Whereas His MAJESTY has been Pleas'd by His Royal Authority, to cauſe the Right Reverend Father in GOD, Samuel Lord Biſhop of Oxford, *to be Inſtalled Preſident of this Colledge, We, whoſe Names are hereunto Subſcribed, do Submit as far as is* Lawful *and* Agreeable to the Statutes of the ſaid Colledge.

The Chaplains, and all the Members of the Society, except the *Under-Porter*, gave in a Paper to the ſame Effect.

But Dr. *Farefax*, who would not Submit unto the Suſpenſion he had incurr'd, Diſowned the Juriſdiction of the Court, for which Reaſon he was Deprived of his Fellowſhip. And, notwithſtanding the abovemention'd Submiſſion, theſe ſame Fellows, within three Days, brought in a *Paper* with all their Hands Subſcribed, of the Tenor following.

May

May it Pleaſe Your Lordſhips,

WEE have Endeavoured in all Our Actions to Expreſs Our Selves with all Humility to His MAJESTY, and being Conſcious to Our Selves, That in the whole Conduct of this Buſineſs before Your Lordſhips, We have done nothing, but what Our Oaths and Statutes **Indiſpenſably** oblig'd Us to; We cannot make any Declaration, whereby We acknowledge that We have done Amiſs, as having Acted according to the Principles of Loyalty and Obedience to His Sacred MAJESTY, as far as We could, without doing Violence to Our Conſciences, or Prejudice to Our Rights (one of which We humbly Conceive that of Electing a Preſident to be), from which We are Sworn, upon no Account whatſoever, to depart. We therefore humbly Beg your Lordſhips to repreſent this Favourably, with Our Utmoſt Duty, to His MAJESTY; Whom GOD grant Long and Happily to Reign over Us.

On

On the *Tueſday*, *October* 25. 1687. they Submit; but on the *Friday* following, *October* 28. they can't in Conſcience do it. A very ſudden, but a prodigious Change. Their Submiſſion was as much as the Viſitours expected; for as it was to the Biſhop of *Oxford*, their Preſident, Inſtalled by His *MAJESTY's* Royal Authority, *as far as is* Lawful *and Agreeable to the Statute of the ſaid Colledge, this was enough*; For according to Church of *England* - Law, the *KING* can Diſpenſe with their Statutes. To talk of an Indiſpenſable Statute, is to ſuppoſe it deſign'd for the Limitation of the *KING's* Power in Eccleſiaſtical Cauſes, whereby it becomes *Ipſo Facto*, void and null; but there being no ſuch Statute, the Method His *MAJESTY* took, was ſuch as capacitated the Fellows to Obey *His* Authority, without laying their Conſciences under a Violence. 'Twas all Fair and Legal, and their Complying ſo far ſatisfied the *KING's* Viſitors.

But, as we may well conjecture, the Fellows having conſulted the *Under* - *Porter*, who had

had either more Sence, or Honesty than the Doctors, for he refused to submit so far, perhaps knowing, that this was a *full Submission*, they tack about, and presume to justifie all that they had done in this Affair: Though they had declared, That they denyed the Jurisdiction of the Court, and thereby endeavoured to Ravish from the KING a peculiar Part of His Supreme Authority; Though they applauded Dr. *Hough*, for his Protesting against the Proceedings, as Illegal, Void, and Null: Yet they arrive to the Boldness of Averring, *That in the Whole Conduct of this Business they did nothing but what their Oaths and Statutes Indispensably obliged them to*; and therefore cannot declare, *That they have done any thing Amiss*, and make Use of what they have oft call'd the Old Seditious Cant of Regulating the Principles of their Loyalty to the *KING*, by the Conscience of an Oath to the Statutes of the Colledge, and with a *Salvo* to their own Rights.

Though the poor Dissenters did Plead **Conscience** of Duty unto *GOD Only*, as

what they Judged ſufficient to exempt them from Obeying their Prince in thoſe Inſtances, which Interfer'd with the *KING*'s Command; yet 'twas enough to provoke the Prelatiſts to cenſure them *Seditious*, *Factious*, *and Rebellious*: But theſe Gentlemen plead *Conſcience*; not that they are bound by an Heavenly Decree, they can go no higher, than to inſiſt on the *Obligation* of a little Colledge-Statute, that has been Diſpenſed with, and the *Sacredneſs* of their Univerſity-Rights, as if greater Regard muſt be had to the Pretended Rights of the Church of *England*-Clergy and Schoolmen, than to thoſe of the CROWN; and a greater Deference muſt be paid to the Vacated Statutes of their Colledge, than the *Puritans* might give to the Commands of Jeſus Chriſt.

Thus theſe *Magdalen*-Gentlemen go on with a Confidence that bears ſome proportion to the Badneſs of their Cauſe, and are not afraid to caſt the Greateſt Contempt on His *MAJESTY*'s Commiſſioners and Viſitors, and conſequently on His *MAJESTY* Himſelf, whoſe Perſon they repreſent, and inſtead of Humbling themſelves for their many In-

Inſolencies, or inſtead of acting according to their *Quondam* avowed Doctrine of Paſſive Obedience, they fly in the Face of Authority, charging it with no leſs Guilt than the *Injuring* a Whole Society; and, as if they had ſtill to do with their Diſſenting Brethren, they cloſe up the Scene with an *Inſulting Threat*: For, after their Expulſion, they ſeverally gave in Papers to the Effect following.

May it Pleaſe Your Lordſhips,

I *Do profeſs all Duty to His* MAJESTY, *and Reſpect to Your Lordſhips, but beg Leave to declare, I think my Self* **Injured** *in Your Lordſhips Proceedings, and therefore Proteſt againſt them, and* will uſe all Juſt *and* Legal *means of being* relieved.

Here you ſee they complain of *Injuries* done 'em, and are reſolv'd to uſe all Juſt and Legal Means (they ſay) for their own Relief. But who can imagine what they will underſtand by Juſt and Legal Means?

The Whole of these Proceedings depend on the Dispensing Power: If His *MAJESTY* had not Dispensed with their Colledge-Statutes, the Case would have been another thing; but the Dispensation makes it manifest, That no Pretence of an *Oath* can be sufficient to excuse their *Disobedience*. Let us then compare the late Actings of these Gentlemen with a Notion we find in an Admired * Pamphlet, Written by one of their own Communion, and we may see Cause justly to conclude, that they esteem the Exercise of the *Dispensing Power* to be a Subversion of the Whole Government, *Which* (to use the Author's own Words) *being so contrary to the Trust that is given to the PRINCE, who ought to Execute it, will put Men upon* Uneasie *and* Dangerous *Enquiries, which will turn Little to the Advantage of those who are driving Matters to such a* Doubtful *and* Desperate Issue. To which let us add, That this is mention'd in Contradistinction to the *Non-resisting Doctrine*; and then consider, Whether any rational Man (who is acquainted with what these very men do, to fill the Minds of His *MAJESTY*'s Subjects with *Discontent*,) can think, that by *Just* and *Legal* they mean any

*A Letter containing Reflections on His Majesty's Declaration for Liberty of Conscience.

any thing leſs than ſome Methods, better indeed *ſilenced* than *expreſſed.*

When the Proteſtant Diſſenters went not half ſo far in their Diſobedience to the Regal Authority, they could not eſcape the Cenſure of being Enemies to the Government, and were immediately made uncapable of any Eccleſiaſtical Benefice. They only refuſed to Subſcribe unto two of the three Articles, and this was interpreted a Renouncing the *KING's* Supreme Authority in Matters Eccleſiaſtical, and without the Aid of an Act of Parliament they were deprived.

And whoever carefully obſerves the Eccleſiaſtick Proceedings, will find, That when the Eccleſiaſtical Judges deal with Delinquents, they never give over till there be either a Submiſſion, or a running the Offender to the Laſt Puniſhment.

Thus, if a Man did but abſent himſelf from the Sacrament, and was admoniſhed, he muſt Conform, or be run to an Excommunication, and at laſt to the Writ *de Excommunicato*

nicato capiendo. In like manner, if any of the Clergy fell under the Cenſure of Suſpenſion *ab Officio*, unleſs there had been a Submiſſion, it went on to a Suſpenſion *à Beneficio*; yea, and to a Deprivation: Which, if done in one Dioceſs, was to be regarded by every Dioceſan throughout the whole Kingdom. And the Reaſon our Clergy give for this, is not the *Ruine* of the Offenders, but a Reducing 'em to the Knowledge of themſelves, and a due Submiſſion to their Superiors; whoſe Part it is to ſecure the Great Ends of Government; as alſo, for the diſcouraging Others from the like Miſcarriages. And on this account it is, that the making the *Magdalen-Fellows* uncapable of Eccleſiaſtical Benefices, Dignities, or Promotions, became **Neceſſary**, it being no more than what is included in every Deprivation of the Clergy. And for this Reaſon the KING's Eccleſiaſtical Commiſſioners have made the enſuing Decree.

By

By His MAJESTY's Commiſſioners for *Eccleſiaſtical Cauſes*, and for *Viſiting the Univerſities, and all and every Cathedral*, and *Collegiate Churches, Colledges, Grammar-Schools*, and *other the like Incorporations*, or *Foundations*, and *Societies*.

WHereas, *We thought Fit by Our Order, of the* 22d. *of* June *laſt, to Declare, and Decree, That the Pretended Election of Mr.* John Hough (*now Dr.* John Tough) *to the Preſidentſhip of St.* Mary Magdalen *Colledge in the Univerſity of* Oxon, *was Void, and therefore did amove the ſaid Mr.* Hough *from the Place of Preſident of the ſaid Colledge; And whereas the Fellows of the ſame were likewiſe convened before Us for their Diſobedience to, and Contempt of His MAJESTY's Authority, by making the ſaid Pretended Election, and it now appearing unto Us, That the ſaid Dr.* John Tough, *Dr.* Charles Aldeworth, *Dr.* Henry Fairfax, *Dr.* Alexander Pudſey, *Dr.* John Smith, *Dr.* Thomas Bayley, *Dr.* Hhomas Stafford, Mr. Robert Almont, Mr. Mainwaring

ring Hammond, Mr. John Rogers, Mr. Richard Strickland, Mr. Henry Dobſon, Mr. James Bayley, Mr. John Davies, Mr. Francis Bagſhaw, Mr. James Fayrer, Mr. Joſeph *Harwar*, Mr. Thomas Bateman, Mr. George *Hunt*, Mr. William Cradock, Mr. John Gillman, Mr. George Fulham, Mr. Charles Penyſton, Mr. Robert *Hyde*, Mr. Edward Yerbury, Mr. *Henry Holden*, *and* Mr. Stephen Weelks, *Lately Fellows of the ſaid Colledge, do* perſiſt in their Diſobedience *and* Contempt; *We have thought Fit, upon Mature Conſideration of the Matter, to Declare, Decree, and Pronounce, And We do accordingly Declare, Decree, and Pronounce, That the ſaid Dr.* John *Hough, &c. and every of Them, ſhall be, & from henceforth they are hereby declared & adjudged Incapable of Receiving, or being Admitted to any Eccleſiaſtical Dignity, Benefice, or Promotion; and that ſuch, and every of them, who are not as yet in Holy Orders, ſhall be, and are hereby Declared and Adjudged incapable of Receiving; or being Admitted into the ſame; And all Archbiſhops, Biſhops, and other Eccleſiaſtical Officers and Miniſters within the Realm of* England, *are hereby required to take Notice of This Our Sentence, Order, and Decree, and to yield Obedience thereunto. Given under Our Seal the* 10th. *of* December, 1687. The

The Concluſion.

THUS You have a Juſt Account given You of the Proceedings of His *MAJESTY*'s Commiſſioners, and Viſitors, with the KING's Power in Matters Eccleſiaſtical; How, according to Church of *England*-*Law*, His *MAJESTY* can Diſpenſe, not only with *College*-*Statutes*, but with *Provincial Canons*, and *Acts* of *Parliament*; And yet how Unjuſtly the Fellows Oppoſed the KING's Supremacy, to which they are All Sworn, and which, they ſhould have Regarded after another manner than they did; As alſo with what Contempt, and Scorn,

they Carryed it towards His *MAJESTY*'s Visitors; Giving them Opprobrious Language, and making False Reports of Matter of Fact, intending to fill the Minds of the KING's Subjects with Fears, Jealousies, and Discontent: so that, on the whole, an Ordinary Capacity may with much clearness perceive, That His *MAJESTY*'s Commissioners, have in their Proceedings against the *Magdalen*-Fellows kept within the Bounds of *Justice*.

And, notwithstanding any thing the Commissioners have done, either against the *Bishop* of *London*, or *Magdalen* College, His *MAJESTY*'s *Clemency* toward the Church of *England* is surprizing, and cannot but appear so to any that do but mind what I have already

ready mention'd about the Opinion of the Judges, which was, *That the* KING *without a Parliament can make Ordinances and Constitutions for the Government* of the Clergy, and Deprive them if they Obey not. To which, let us Add, That this was the very End, for which the Judges Opinion was desired, *viz.* The Justifying the Church of *Englands* Depriving the Old Puritans for not Subscribing to the Ceremonies enjoyned by the Canon; thereby plainly shewing, that the KING without a Parliament may appoint what Ceremonies He please.

Now it's not to be doubted, That if His *MAJESTY* would but Exercise this Power in Matters Ecclesiastical, he might Appoint and

Ordain ſo many Ceremonies, and Require Subſcription to them, as would make the Church of *England* look exactly like that of *Rome*, and Deprive all thoſe that dare Diſobey.

Let us but Conſider then, with what Severity the Church of *England* - Clergy expreſs themſelves againſt Popery: and again, Obſerve how eaſily the KING might by their own Law, impoſe a very great Part of *It* on them, and deprive them, if they Obey not; and 'twill not be difficult to conclude, what would be the condition of theſe Preſent Sticklers againſt Popery. To the Sign of the Croſs in Baptiſm, the KING might enjoyn Exſufflation, Salt, and Spittle; and to Kneeling at the Sacrament, the

Deacons

Deacons *Kiſſing* of the Hand, or Right *S*houlder of the Prieſt, and the Mens *Kiſſing* each other; beſides Holy Water, and it's Conſecration, as well as the Conſecration of Churches; and a hundred ſuch things more might His MAJESTY, enjoyn the Clergy, and thereby make it neceſſary for Our Clergy to Subſcribe unto all theſe, to the Opening the Mouths of *Diſſenters* againſt them, or to Feel what a Deprivation is.

But His MAJESTY, to the end He may convince the moſt Obſtinate Enemies to His Government, is Reſolv'd to Proceed in the calmeſt Way; and therefore, notwithſtanding the moſt Undutiful, and Diſloyal Reflections Caſt on MAJESTY It ſelf, by ſome of the Church

Church of *England*; It's His Royal Purpoſe, That His Commiſſioners ſhall not Exereiſe that Severity againſt them, which they have againſt *Proteſtant-Diſſenters*; Nor will His *MAJESTY* take thoſe Advantages againſt their Clergy, which He might: He is rather for the more Peaceable and Chriſtian Methods, and therefore will do the *Church* of *England* no more Hurt, than to give Eaſe unto Others: And nothing but a moſt Violent Provocation, can Overcome Him to Alter this Method.

FINIS.